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May 19, 2000

Ms. Magalie Roman Salas
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Federal Communications Commission
445 Twelfth Street, S.W.
Room TW-A325
Washington, D.C. 20554

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MAY 19 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: CC Docket No. 99-200
<u>Comments of AT&T Corp.</u>

Dear Ms. Salas:

Enclosed for filing on behalf of AT&T Corp. are an original and four (4) copies of "Comments of AT&T Corp." on the Further Notice of Proposed Rulemaking in the above-captioned proceeding. A copy on diskette has been submitted to Jeannie Grimes, Network Services Division, Common Carrier Bureau. We have also enclosed a copy to be date-stamped and returned. Thank you in advance for your assistance.

Best regards,

Amy L. Bushyeager

Amy L. Bushyeager

enclosures
cc: Jeannie Grimes (w/diskette)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200

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COMMENTS OF AT&T CORP.

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, AT&T Corp. ("AT&T") hereby submits its comments on the Further Notice of Proposed Rulemaking issued in the above-captioned proceeding.[1/]

INTRODUCTION AND SUMMARY

AT&T commends the Commission for its truly exceptional efforts throughout the NRO proceeding in building a detailed record and carefully analyzing the facts and arguments presented. The results are evident in the NRO Order. With the guidance the Commission has now provided, state commissions, the industry, and the NANPA can work together to implement far more efficient number administration practices. The NRO Order establishes a framework for national thousands-block pooling that, if implemented correctly, will dramatically slow the pace of number exhaust and the associated costs of area code relief, and possibly avoid the need for expansion of the North American Numbering Plan (the "NANP"). AT&T submits these

1/ In the Matter of Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rulemaking, FCC 99-122, CC Docket No. 99-200 (rel. June 2, 1999) ("NRO Order" and "NRO FNPRM").

comments to assist the Commission in implementing the policies and achieving the goals set forth in the NRO Order.

First, the Commission's tentative conclusion to set the initial national utilization threshold for non-pooling carriers to obtain growth codes at 50 percent is entirely appropriate given the percentage of each carrier's numbering inventory that is unavailable at any given time. To ensure that carriers have enough numbering resources to provide service, AT&T urges the Commission to exempt from the utilization threshold carriers that are six months from exhaust or otherwise incapable of meeting a documented consumer request within a particular rate center. AT&T believes that increasing the utilization threshold by 10 percent per year until it reaches 80 percent, as the FNPRM proposes, would deprive carriers of adequate numbering resources. Instead, AT&T proposes that the utilization rate be increased five percent per year to a cap of 60 percent in 2003, at which time a higher utilization rate will be unnecessary because non-pooling carriers will have achieved pooling capability. Finally, the Commission should not undermine the effectiveness of the nationwide utilization threshold by setting rate-center specific thresholds, or by permitting individual states to establish different thresholds.

Second, AT&T proposes that the Commission provide commercial mobile radio services ("CMRS") carriers a six-month period after the initiation of wireless local number portability ("LNP") before beginning the process of identifying thousands blocks to be donated to the pool. Failure to provide a transition period for the resolution of LNP operational problems could result in serious service disruptions to the detriment of both wireline and wireless subscribers. The Commission should give state commissions and the pooling administrator until June 1, 2003 to complete a priority list of NPAs in which wireless carriers will pool. By that time, all service providers will have confidence that their networks are operating properly with the addition of national wireless LNP, and that wireless and wireline customers are not experiencing service degradation as a result of that service's implementation.

Third, AT&T strongly opposes consideration of any plan that would require carriers to pay for numbers. The Commission's enabling statute does not grant it the authority to charge for numbering resources. Moreover, it would be difficult, if not impossible, to design a payment system that would be competitively neutral, as required by 47 U.S.C. § 251(e)(2). If carriers were required to pay only for new numbering resources, or on the basis of numbers not yet assigned to consumers, any such plan would advantage incumbent local exchange carriers ("ILECs") while penalizing new entrants.

Fourth, AT&T fully supports the Commission's decision to apply the same cost recovery principles established in its LNP proceeding to thousands-block number pooling, and urges the Commission to adhere to the principles underlying that framework. Most importantly, the Commission should clarify, as it did with regard to LNP, that recovering pooling costs through access charges is not competitively neutral. Failing to do so would force interexchange carriers ("IXCs") to cover not only their own pooling costs, but also a substantial portion of the ILECs' expenses in the form of higher access charges.

AT&T continues to believe that requiring carriers to bear their own carrier-specific pooling costs is the most equitable and efficient means of cost recovery. If, however, the Commission determines that some carrier-specific costs should be recovered through a surcharge or other mechanism, it must be vigilant -- as it was in the LNP docket -- against ILEC attempts to inflate their claimed pooling costs by means such as overstating the expense associated with network software upgrades or incremental overhead costs. The Commission must stringently apply the two-part test adopted in the NRO Order to foreclose attempts to recover costs not directly related to pooling. Careful evaluation of claimed costs will prevent ILECs from financing general network upgrades through the pooling cost recovery mechanism. The Commission must also ensure that ILECs do not reap a windfall by claiming costs already recovered through LNP recovery mechanisms.

I. THE COMMISSION SHOULD ADOPT A UNIFORM NATIONWIDE UTILIZATION RATE FOR NON-POOLING CARRIERS OF 50 PERCENT INCREASING TO 60 PERCENT WITH AN EXCEPTION FOR CARRIERS NEARING EXHAUST

AT&T supports the Commission's tentative conclusion to set an initial nationwide utilization threshold for "growth" numbers at 50 percent.[2/] While commenters had suggested, and some states have adopted, higher utilization thresholds, the Commission's current proposal appropriately takes into account its decision to base utilization thresholds on numbers "assigned" to customers, as opposed to numbers that are "unavailable for assignment."[3/] Because the NRO Order fundamentally changes the method formerly used to calculate utilization rates, there is simply no basis to assume that the higher thresholds currently employed by some states should be carried forward under the new framework created by the Commission.[4/] In this regard it is important to recognize that not all "unassigned" numbers are, in fact, available to end users. Indeed, an average of 10 to 15 percent of numbers in a CMRS carrier's inventory are unassigned but are allocated for use as TLDNs (temporary directory numbers), ESRD/ESRK (emergency

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2/ NRO FNPRM at ¶ 248.

3/ NRO Order at ¶ 109.

4/ States that have adopted a utilization rate of 75 percent or higher have calculated the rate based on "unavailable" numbers, which, as these comments demonstrate, is fundamentally different from basing the utilization rate on numbers that are "assigned."

service routing digit/key for E911 service), in the aging process, or otherwise unavailable to customers.[5/] Additionally, an undetermined percentage of numbers are allocated per contractual arrangement to resellers but are not yet assigned to end users of the reseller. These numbers, too, are unavailable for assignment to the wireless code holder's direct end users. Given carriers' inability to use a portion of their inventory, the Commission can be confident that a slightly lower utilization rate than that proposed in the FNPRM will increase numbering efficiency while at the same time protecting carriers' ability to obtain the numbering resources they need to serve customers. Moreover, by requiring carriers to specify the function for which they are reserving administrative numbers and by permitting industry bodies and state commissions to delineate secondary number categories, the Commission has effectively foreclosed most opportunities to "pad" utilization rates.[6/]

Regardless of the actual utilization rate chosen, a carrier that does not meet the threshold should be permitted to obtain a growth code if, based on historical utilization, the carrier can demonstrate that it will run out of numbers in less than six months or that an additional code is needed to meet a documented customer request. In the absence of such an exception, a carrier's ability to meet customers' demands for new services would be severely hampered without any corresponding number conservation benefits.[7/] Illinois, the first state to adopt a utilization threshold, recognized the inherent limitation of such a mechanism, and created an exception

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5/ Because of the wireless industry's high churn rate, many numbers are rendered unavailable as a result of aging intervals even when those intervals are quite short.

6/ NRO Order at ¶¶ 32, 36.

7/ See Reply Comments of AT&T, CC Docket No. 99-200, at 19-20 (filed July 30, 1999) ("AT&T NRO Reply").

based on forecasted demand.[8] Maine and Massachusetts have either proposed or adopted similar exceptions.[9] And, notably, the Commission has created a similar need-based exception for specific customer requests in its sequential numbering requirements.[10] To ensure that the exception process is administered in a consistent manner nationwide, AT&T urges the Commission to grant the NANPA authority to approve or deny exemption requests.

In light of the Commission's decision to base utilization solely on "assigned" numbers, AT&T strongly opposes the Commission's proposal to increase the threshold by 10 percent per year until it reaches a level of 80 percent. Because 10 to 15 percent of a carriers' numbers are unavailable to customers at any given time, an 80 percent utilization threshold would force carriers to come within as little as 5 percent of their available number stock before qualifying for another code. Carriers operating on such a thin inventory would not have sufficient resources to respond to increases in customer demand or changes in the competitive landscape. Code holders would also frequently reach the six months to exhaust point before attaining the 80 percent

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8/ See Citizen Utility Board, Petition to Implement a Form of Number Conservation known as Number Pooling within the 312, 773, 847, 630, and 708 Area Codes; Illinois Bell Telephone Company, Petition for Approval of an NPA Relief Plan for the 847 NPA, Nos. 97-0192, 97-0211, Order of the Illinois Commerce Commission, at 26-27 (rel. May 6, 1998) (The Commission . . . is concerned about the ninety day lag between the time that a new NXX code is requested and the time that it can be activated. It is possible that there will be circumstances in which a carrier needs to request a new NXX code to meet expected growth in customer demand within a ninety day period, even though one or more of the carrier's existing NXX codes has a utilization rate of less than 75 percent at the time the carrier makes its request to the Code Administrator.").

9/ Letter from the Massachusetts Department of Telecommunications and Energy to Massachusetts LNP and Wireless Carriers, D.T.E. 99-99 (Jan. 27, 2000); Examiner's Report and Request for Comments, Docket 98-634, Maine Public Utilities Commission (Oct. 15, 1999).

10/ NRO Order at ¶ 245 (permitting providers to open clean blocks prior to fully utilizing previously-opened blocks when there is no other way to fulfill a genuine consumer request will improve efficiency while maintaining carriers' flexibility to meet consumer demand).

utilization rate. This would force carriers to rely repeatedly on the exception process outlined above, vitiating the central benefit of a utilization rate -- ease of administration; or, if no such process were available, to turn away customers who wished to obtain new services.

AT&T instead proposes that the utilization rate be increased five percent per year to a cap of 60 percent in 2003.[11/] The utilization rate need not be increased beyond 2003 because at that point, CMRS providers, the largest segment of non-LNP capable carriers, will have achieved LNP and pooling capability. The measures set forth in the NRO Order, together with a maximum utilization rate of 60 percent for carriers in non-pooling areas, strike an appropriate balance among the needs to encourage efficient number usage, to ensure that carriers have a sufficient supply of numbers to provide service, and to promote reasonable and effective number administration.

The Commission should also clarify that there will be one nationwide utilization rate that is uniform across all rate centers in all states. Allowing state commissions to set utilization thresholds would make it considerably more difficult for the NANPA to administer code allocations and for auditors to confirm carriers' compliance with varying requirements Moreover, requiring carriers to contend with different utilization thresholds from state to state or rate center to rate center would add tremendous complexity and expense to their efforts to manage inventories, with no readily apparent increase in the efficiency of number usage. Indeed, there is no evidence of any kind that conditions are sufficiently distinct from one state to another to warrant the burden of state-specific rates for growth codes. In the NRO Order the

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[11/] AT&T proposes that utilization rates begin at 50 percent on January 1, 2001; increase to 55 percent on January 1, 2002; and increase to 60 percent on January 1, 2003.

Commission decided to "adopt a nationwide utilization threshold for non-pooling carriers."[12/] There is no legitimate reason to undermine that decision less than two months later.

II. WIRELESS CARRIERS SHOULD BE GIVEN A REASONABLE TRANSITION PERIOD BETWEEN THE IMPLEMENTATION OF WIRELESS LNP AND POOLING DEPLOYMENT

AT&T urges the Commission to give wireless providers a reasonable transition period between the implementation of LNP and the deployment of thousands-block pooling. As the Commission has recognized, attaining wireless LNP is extremely difficult because of the need to split the mobile identification number ("MIN") and the mobile directory number ("MDN").[13/] In addition, unlike LNP for wireline carriers, every CMRS provider must commence this element of wireless portability simultaneously in order to support nationwide roaming. It was precisely these challenges that prompted the Commission to forbear from applying LNP requirements to wireless carriers until 2002,[14/] and, more recently, to deny requests that carriers expedite the deployment of wireless LNP for pooling purposes.[15/] Given the difficulties associated with implementing wireless LNP -- the initial step in deploying pooling -- prudence and equity militate in favor of a transition time between deploying the two technologies.

[12/] NRO Order at ¶ 115 (emphasis added).

[13/] See In the Matter of Cellular Telecommunications Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations, Memorandum Opinion and Order, 14 FCC Rcd 3092, 3105 ¶ 28 (1999) (granting wireless carriers additional time to implement LNP based on the technical difficulties associated with separating the MIN and the MDN).

[14/] Id.

[15/] NRO Order at ¶ 137 (refusing to order carriers to speed the deployment of LNP for the purposes of pooling because such a requirement would divert carriers from other important tasks, such as implementing LNP itself).

While network modifications required for pooling will be relatively minor as compared to the changes required for LNP implementation,[16/] the wireless industry anticipates a high volume of wireless number porting that may result in a significant strain on newly deployed systems. High churn rates are the hallmark of the vigorously competitive wireless industry, and it is likely that the level of wireless porting will equal the industry churn rate of two percent per month.[17/] Based on that figure, the wireless industry expects to port 1.7 million users per month.[18/] In comparison, wireline carriers have ported a total of 6.5 million subscribers in the 17 months since they commenced porting in the top 100 MSAs. Over the same period wireless porting could reach four times that number, or 27 million subscribers. Moreover, to preserve nationwide roaming, wireless carriers will not have the luxury of gradually rolling out LNP in the top 100 MSAs, as did their wireline counterparts.

To mitigate performance issues that may result from an unprecedented volume of porting and the "flash-cut" implementation necessitated by roaming concerns, AT&T proposes that the Commission provide wireless carriers a six-month period after the initiation of LNP before beginning the process of identifying thousands blocks to be donated to the pool. Failure to provide a transition period to ensure that LNP is functioning properly on a nationwide basis

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16/ Comments of AT&T, CC Docket 99-200, at 48 (filed July 30, 1999) (stating that the "incremental cost and time" for wireless carriers to implement pooling after achieving LNP capability will be relatively minimal) ("AT&T NRO Comments").

17/ Once wireless LNP is in place, consumers will likely enjoy the added convenience of retaining their numbers as they switch carriers to take advantage of the most competitive pricing and service offerings.

18/ In January , the national wireless base was 83 million subscribers.

could result in major service disruptions to the detriment of both wireline and wireless subscribers.

For these reasons, the Commission should give state commissions and the pooling administrator until June 1, 2003 to complete a priority list of NPAs in which wireless carriers will pool. By that date, wireless carriers will have sufficient experience with LNP and will be prepared to begin the pooling implementation process pursuant to the INC Guidelines. AT&T anticipates that wireless carriers will require six months to implement pooling, allowing them to deploy that capability in three NPAs per NPAC region per quarter starting December 1, 2003.[19/] AT&T's proposed schedule strikes a workable balance between timely deployment of pooling by wireless carriers and the need to ensure that the deployment is not plagued by service failures that could have been avoided with proper testing and resolution of issues raised by LNP implementation.

III. ANY PLAN TO CHARGE FOR NUMBERING RESOURCES WOULD EXCEED THE COMMISSION'S JURISDICTION

AT&T continues to oppose strongly any proposal to require carriers to pay for numbering resources.[20/] As a threshold matter, the Commission has no authority to impose such a requirement. Although Section 251(e)(l) of the Communications Act authorizes the Commission to administer numbering resources, the Act contains no grant of power to sell numbers. An illuminating analogy can be drawn to the Commission's authority to auction licenses to use portions of the electromagnetic spectrum, which derives from a specific statutory provision

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[19/] The Commission set the same implementation schedule for wireline carriers. See NRO Order at ¶ 161.

[20/] See AT&T NRO Comments at 61-62.

rather than the Commission's general power to manage spectrum.[21] Without a similar specific congressional mandate, the Commission lacks jurisdiction to create a payment system for the use of telephone numbers.[22]

Even assuming, for the sake of argument, that the Commission had the authority to charge for numbers, it would be difficult, if not impossible, to design a competitively neutral payment regime, as required by 47 U.S.C. § 251(e)(2). Charging only for the acquisition of new numbering resources would advantage ILECs, which benefit both from their ability to obtain significant quantities of numbers due to customer "churn," and from their stores of "warehoused" numbers.[23] New entrants do not benefit from this phenomenon to the same extent because they

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[21] The provision of the Omnibus Budget Reconciliation Act of 1993 authorizing the Commission to award spectrum licenses via auctions makes clear that Congress was granting the Commission authority it had not previously possessed. See Comments of AT&T at 62 (citing 47 U.S.C § 309(j)(1) and 309(j)(10)).

[22] The fact that the Commission's enabling statutes do not expressly withhold the power to charge for numbering resources provides no support for the claim that Congress intended to grant that authority by implication. "To suggest ... that Chevron step two is implicated any time a statute does not expressly negate the existence of a claimed administrative power (i.e., when the statute is not written in 'thou shalt not' terms), is both flatly unfaithful to the principles of administrative law ... and refuted by precedent." Railway Labor Executives' Assoc. v. NMB, 29 F.3d 655, 671 (D.C. Cir. 1994) (en banc), cert. denied, 115 S. Ct. 1392 (1995); accord, e.g., Ethyl Corp. v. EPA, 51 F.3d 1053, 1060 (D.C. Cir. 1995).

[23] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, 19519 ¶ 289 (1996). AT&T does not contend that ILECs' store of "warehoused" numbers resorts from any intentional stockpiling of numbers. Rather, by virtue of their longstanding historic monopolies, incumbent LECs have acquired significant quantities of numbers that are available for assignment. See id.

do not have a large embedded base of customers.[24/] Given that a number assigned by an ILEC in 1960 contributes to exhaust in precisely the same manner as a number assigned by a CLEC in 2000, there is no rational basis to charge only for use of the later-assigned number.

It would be equally discriminatory to construct a payment scheme on the basis of numbers that have been allocated to carriers but not yet assigned to customers. CLECs seeking to enter new markets must establish a service "footprint," and thus at the outset require relatively large volumes of unused numbers. The Commission must also recognize that even as a CLEC attracts customers, its utilization could remain relatively low if most of those customers elect to port their numbers from their existing ILEC service, and thus do not obtain a number from the CLEC. In that same local exchange market, the ILEC would have a comparatively high utilization rate over the same period by virtue of its historic monopoly.[25/] The Commission may not, consistent with Section 251(e)(2), implement a system that benefits one class of carriers while penalizing others.

Further, it is axiomatic that because charging for numbering resources would increase carriers' costs, they would be forced to recover these costs in the form of higher prices for their

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[24/] Moreover, ported numbers regularly "snap back" to incumbents when a customer with a ported number cancels service with a CLEC and the ported number reverts to the ILEC to which the number was originally assigned. While CLECs also can benefit from this phenomenon, they do so to a far lesser extent than incumbents, because ILECs have a much larger embedded customer base and thus are more likely to have large numbers of customers port their service to other carriers.

[25/] By making numbers available in smaller blocks, pooling would help reduce -- but not eliminate -- the ILECs' competitive advantage in this regard. These benefits will not, however, accrue to carriers in areas without pooling or those service providers who do not participate in pooling.

services.[26/] The reforms contained in the NRO Order hold great promise to slow the pace of numbering exhaust and extend the life of NPAs. Even if the Commission had the legal authority to do so (as it does not), there is simply no reason to embark at this time on a complex, untested, and costly scheme of charging for numbers in an effort to achieve those same ends.

IV. THOUSANDS-BLOCK NUMBER POOLING COST RECOVERY SHOULD ADHERE TO THE "COMPETITIVE NEUTRALITY" STANDARDS ESTABLISHED IN THE LNP PROCEEDINGS

In the NRO Order, the Commission correctly determined that the cost recovery mechanism for pooling should adhere to the standards it previously established for LNP.[27/] In light of that decision, there are no reasonable grounds to permit pooling costs to be recovered via access charges. The Commission has unequivocally rejected the use of access charges to recover LNP costs, and strongly suggested that such action would not be competitively neutral.[28/] The market conditions and reasoning that led to this conclusion are fully applicable to thousands block pooling cost recovery.[29/] In particular, recovering pooling costs in access charges would force IXCs to "pay twice" for number conservation measures; first, by covering their own pooling expenses and, second, by absorbing a substantial portion of ILECs' costs. Moreover, a system that permits ILECs to earn supracompetitive profits on bottleneck facilities would be

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[26/] Any scheme that charges for numbers, regardless of how it is implemented, would raise barriers to competitive entry by increasing carriers' costs of doing business.

[27/] NRO Order at ¶ 193.

[28/] Telephone Number Portability, Third Report and Order, 13 FCC Rcd 11701, 11773 ¶ 135 (1998) ("Because number portability is not an access-related service and IXCs will incur their own costs for the querying of long-distance calls, we will not allow LECs to recover long-term number portability costs in interstate access charges. Nor would it likely be competitively neutral to do so.") ("LNP Order").

[29/] See LNP Order at ¶ 39 ("If the Commission ensured the competitive neutrality of only the distribution of costs, carriers could effectively undo this competitively neutral distribution by recovering from other carriers. For example, an incumbent LEC could redistribute its number portability costs to other carriers by seeking to recover them in increased access charges to IXCs.").

directly contrary to the Commission's often stated goal of reducing access charges to cost, and would likely violate Section 254 as well.[30]

A. Shared Industry Costs of Number Pooling Will Be Modest in Comparison to LNP Costs

AT&T fully supports the Commission's decision to recover shared industry pooling costs through the existing NANPA fund formula.[31] Use of the NANPA formula will ensure that industry-wide costs are shared in a competitively neutral manner and that no carrier or class of carriers is unfairly burdened.[32]

The shared industry costs of implementing and administering thousands-block pooling will be very modest when compared to the costs of LNP implementation. Industry-wide pooling costs can be divided into three components: one-time NPAC software upgrades required to implement pooling, one-time and recurring costs of administering number pools,[33] and ongoing charges for downloading and activating blocks to maintain pools.[34] Because most of the necessary network upgrades have already been completed as part of LNP implementation, the additional pooling costs will be an insubstantial portion of the cost of number administration. By

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[30] See Texas Office of Public Utility Counsel, et al. v. FCC, 183 F.3d 393, 425 (5th Cir. 1999) (holding ILECs' "flow through" of universal service contributions to IXCs via higher interstate access charges violates the statutory prohibition on implicit subsidies in Section 254).

[31] NRO Order at ¶ 207.

[32] See id.

[33] These costs include application fees, block fees, and costs associated with industry meetings. Application and block fees will be negotiated by the industry and the pooling vendor.

[34] These charges are a shared industry costs reflecting increased NPAC fees for porting to pools. Downloading and activation fees will fluctuate on a monthly basis.

allocating these costs according to the NANPA formula, each carrier's share is likely to be trivial in comparison with its overall network planning and administrative budget.

B. Carriers Should Bear Their Own Carrier-Specific Pooling Costs

As AT&T argued in its initial comments in this proceeding, carriers should bear their own carrier-specific pooling costs.[35/] In applying that principle in the LNP cost recovery proceeding, the Commission held that requiring carriers "to bear their own carrier-specific costs directly related to providing number portability will not disadvantage any telecommunications carrier" because a carrier's costs should correspond directly to the number of customers that carrier serves.[36/] As the Commission found, "[i]ncumbent LECs will likely have large absolute costs because of their large networks, but they also will have a large customer base over which to spread those costs; competitive LECs and CMRS providers will likely incur fewer absolute costs because of their smaller networks, but they will also likely have smaller customer bases over which to spread those costs."[37/] Because there is no reason to believe that the cost per telephone-number for pooling will be disproportionately higher for any one class of carriers than another, requiring carriers to bear their own carrier-specific pooling costs is the formulation that is the least "regulatory," administratively simplest, and most consistent with the competitive neutrality

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[35/] See LNP Order at 8422 ¶ 136 (ruling that "a mechanism that requires each carrier to pay for its own costs of currently available number portability measures" would satisfy the competitive neutrality requirement of Section 251(e)(2)).

[36/] See Telephone Number Portability, Third Report and Order, 13 FCC Rcd 11701, 11774 ¶ 137 (1998) ("LNP Cost Recovery Order").

[37/] Id.

requirement of Section 251(e)(2).[38] Moreover, requiring carriers to recover their own costs will deter attempts by carriers to pad their cost estimates, and eliminate the need for the Commission to undertake the extremely burdensome process of evaluating ILEC cost claims, as it was forced to do in the LNP proceeding.[39]

If the Commission nevertheless determines that a federal cost recovery mechanism is appropriate for some carrier-specific costs, it should stringently apply the two-part test established in the LNP proceeding and adopted in the NRO Order. That is, only those network upgrades or portions of upgrades that "would not have been incurred 'but for' the implementation of thousands-block number pooling and were incurred 'for the provision of' thousands-block number pooling are eligible for recovery."[40] ILECs must not be permitted to use pooling cost recovery to finance network upgrades that do not meet these requirements or general overhauls of their number administration systems. For example, installation of newer systems with Efficient Data Representation ("EDR") capabilities generally support efficient

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[38] In the event the Commission decides to permit recovery of carrier-specific pooling costs through a federal mechanism, AT&T believes that the best course would be to make an adjustment to the LNP line-item charge to account for the incremental costs of national number pooling. The true incremental costs of pooling will be very small in relation to the costs of number portability, and thus would result in a minimal increase in the LNP surcharge.

[39] The Commission disallowed roughly $900 million in costs claimed in ILEC LNP tariffs (and the costs initially claimed by the ILECs were even higher than those in the tariff filings in question). See Public Notice, FCC Investigation Produces Lower Number Portability Charges for Customers of U S West Communications, Inc. (rel. July 9, 1999) (noting that as a result of the Commission's LNP tariff investigations, "the amount consumers will pay for local number portability has been reduced by almost $900 million.").

[40] NRO Order at ¶ 218.

network operations. As a result, the full costs of these upgrades are not directly attributable to number pooling.[41/]

Because the NRO Order expressly requires state commissions that implement interim pooling programs to establish cost recovery measures,[42/] the Commission should also ensure that carriers do not double-recover pooling costs by seeking federal recovery of expenses already recovered through state mechanisms. It is likely that a significant portion of the start-up costs of thousands-block pooling will be incurred -- and recovered -- as part of interim pooling regimes.

The Commission also must guard against double recovery of LNP costs. ILECs will recover through the LNP surcharge all of the LNP-related costs that meet the Commission's criteria. Pooling and LNP are closely interrelated, and it is readily foreseeable that some ILECs may seek to recover costs that were already addressed in (or considered and rejected in) the LNP docket. For example, claims that costs to modify Operation Support Systems ("OSS") were incurred to support pooling implementation should be examined carefully. Because OSS already have been substantially modified to implement number portability, new, incremental changes required to support pooling should be minor.[43/] Likewise, pooling will not require an appreciable increase in signaling traffic beyond that which would have resulted from LNP queries, because

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41/ See NRO Order at ¶ 168. The deployment of EDR will also mean that carriers' additional Signal Control Point ("SCP") capacity requirements should be negligible.

42/ See id. at ¶ 171 ("[S]tates conducting their own pooling trials must develop their own cost recovery scheme for the joint and carrier-specific costs of implementing and administering pooling in the NPA in question.").

43/ The ILECs, for example, have already modified their OSS systems to conform to changes in the LERG that identified block ownership. Further, claims for costs related to additional personnel and other expenses for administering pooling should be inversely related to OSS costs for mechanized systems.

once the first number ports in an NXX, then all subsequent calls to that NXX require an LNP query. ILECs are thus unlikely to incur significant costs to increase signaling capacity in connection with pooling.

More generally, ILECs also must not be permitted to claim OSS and other costs that are not actually used for pooling, as these expenditures do not satisfy the second prong of the Commission's two-part test. As the LNP cost recovery precedents make clear, the fact that the deployment of pooling may have required an ILEC to modify an OSS or otherwise change its operations is not sufficient to justify recovery of the costs of that upgrade through whatever mechanism is established for pooling cost recovery.[44/]

Similarly, overhead loadings set forth in ILEC cost studies should be carefully reviewed under the Commission's two-part test. The ILECs' LNP surcharge and query tariffs included wildly inflated overhead claims.[45/] Overhead costs satisfy the criteria established in the LNP docket only if a carrier can demonstrate that it has in fact experienced an incremental increase in

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[44/] See, e.g., In the Matter of Long-Term Number Portability Tariff Filings, CC Docket No. 99-35, at ¶ 42 (rel. July 16, 1999) ("[A]lthough the incumbent LECs have sufficiently demonstrated that the implementation of number portability has prompted changes to many OSS systems, some costs they claim appear to have been made to modify OSS functions that are incidental to the provision of number portability service.") ("LNP Tariff Order"); AT&T Corp. Opposition to Direct Cases, CC Docket No. 95-116, at 5 (filed Apr. 19, 1999) ("[T]here is simply no merit to the ILECs' claims that the Commission intended to permit them to recover in LNP tariffs their costs to modify billing, ordering or other systems that are affected by LNP, but are not used to provide that capability.").

[45/] See, e.g., LNP Tariff Order at ¶¶ 95-99 (finding that in their initial tariff filings, Pacific Bell and Southwestern Bell's overhead costs were "unreasonably high" and included administrative, operational, and network services costs that had only a minimal or incidental involvement in supporting LNP).

those costs that are directly attributable to pooling.[46] It is unlikely that there will be significant new overhead costs associated with thousands-block pooling.

Nor should ILECs be permitted to recover via a pooling cost recovery mechanism their costs associated with increased reporting requirements. The new reporting requirements imposed in the NRO Order are driven by the Commission's desire to improve the efficiency with which number resources are managed and virtually all of them would be necessary even if LNP-capable carriers were not required to participate in pooling.[47] Accordingly, reporting costs do not satisfy either prong of the two-part test adopted in the NRO Order.

C. Thousands-Block Pooling Will Permit ILECs To Avoid Many Expenses Associated with NPA Relief

The record established in the instant docket and related proceedings leaves no doubt that area code changes are difficult and expensive for consumers and carriers, alike. Carriers must, *inter alia,* update all number-driven billing, operations, and customer account management systems through what are largely manual processes, engage in industry-wide consumer education efforts, and notify their own customers of the nature and extent of the change. And while the costs associated with NPA relief are high, they pale in comparison to the costs carriers and the public would incur if the NANP exhausts. According to current estimates, expanding the NANP would cost between $50 and $150 billion.

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[46] LNP Order at 11740 ¶ 74 (determining that carriers may identify as carrier-specific costs directly related to providing LNP only those incremental overheads that they can demonstrate were incurred in the provision of LNP).

[47] See NRO Order at ¶ 37 ("[M]onitoring individual carriers' use of numbering resources is . . . necessary to ensure that numbering resources are efficiently used. . . ."). See also id. at ¶ 40 (requiring all carriers receiving numbering resources from the NANPA to supply forecast and utilization data).

Thousands-block pooling will permit carriers to avoid the costs associated with area code relief, and will postpone -- and perhaps eliminate -- the enormous costs they would incur as a result of NANP exhaustion.[48/] As the Commission's own analysis demonstrates, if pooling delays NANP expansion by even a few years, the savings would be considerable.[49/] Further, by extending the life of the NANP, pooling will enable the public to postpone or avoid the expense and inconvenience they would incur in the event the NANP exhausts.

The substantial savings promised by pooling thus will likely exceed the carriers' costs to implement that capability, and may actually reduce the costs of administering numbers in the long run. Accordingly, AT&T concurs with the Commission's proposal that a carrier seeking to recover carrier-specific pooling costs should be required to calculate the expenditures it expects to avoid as a result of pooling, and to offset the savings against its claimed incremental pooling expenses.[50/] Failing to reduce pooling cost recovery by these anticipated savings would grant carriers an unjustifiable windfall.

[48/] See NRO Order at nn. 10, 12.

[49/] Id. at n.12 (calculating the cost savings resulting from extending the life of the NANP for 20 and 30 years).

[50/] See NRO Order at ¶ 215 (requesting that "carriers determine their potential cost savings resulting from thousands-block number pooling" by analyzing the costs avoided through less frequent NPA relief, and concluding that carriers should offset their incremental pooling costs by these savings).

CONCLUSION

AT&T urges the Commission to act on the FNPRM consistently with the above comments.

Respectfully submitted,

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